

REMARKS

Claims 1, 8-12, 17-21, 23-27 and 29-36 have been amended. No claims have been added or cancelled. Claims 1-36 are pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Objection to the Title:

The Examiner objected to the title of the application as not descriptive or precise. Applicants respectfully disagree. The current title, "Deterministic Immutable Access Elimination for Efficient Distributed State Saves" is descriptive of the claimed invention. For example, claim 1 recites that "the first application server is configured to exclude from the set immutable attributes of the client state of the session" "for synchronizing the primary state with the client state". Therefore, Applicants respectfully request withdrawal of the objection to the title.

Section 112, Second Paragraph, Rejection:

The Examiner rejected claims 1, 10, 19, 25 and 31 under 35 U.S.C. § 112, second paragraph as indefinite. In light of the amendments indicated above, Applicants request removal of the § 112 rejection of claims 1, 10, 19, 25 and 31.

Section 101 Rejection:

The Examiner rejected claims 31-36 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 31-16 have been amended to overcome the § 101 rejection and removal thereof is respectfully requested.

Provisional Double Patenting Rejection:

The Examiner provisionally rejected claims 1, 10, 19, 25 and 31 under the

judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 10, 19, 27 and 35 of co-pending Application No. 10/087,225. The instant application and the 10/087,225 application are both pending patent applications, not issued patents. If and/or when this rejection becomes non-provisional, Applicants will consider filing a terminal disclaimer or present reasons traversing the rejection.

Section 103(a) Rejection:

The Examiner rejected claims 1-36 under 35 U.S.C. § 103(a) as being unpatentable over Bauer (U.S. Patent 5,884,325). Applicants respectfully traverse this rejection for at least the following reasons.

In regard to claim 1, the cited art does not teach or suggest a distributed store comprising a primary state of session data accessible by a plurality of application servers. Bauer teaches a database synchronizer for synchronizing client databases with a single centralized database. Bauer teaches that mobile clients modify their client databases when they are disconnected from the central database. When a client re-connects to the server, the database synchronizer synchronizes the client database to the central database.

Bauer specifically employs a single central server and a plurality of remote clients. (Bauer -- col. 1, line 67 – col. 2, line 1; col. 6, lines 4-13). As shown in Fig. 1 of Bauer, a single server node 10 provides a central database 12 which may be synchronized for a plurality of clients nodes 20_{a-z}. Thus, Bauer clearly does not teach a plurality of application servers. To the contrary, Bauer requires a single central server. The Examiner appears to be attempting to equivocate the plurality of clients in Bauer to a plurality of applications servers. However, **by definition**, clients are not servers, let alone application servers.

Furthermore, the database in Bauer does not store session data accessible by a plurality of application servers. Bauer teaches that each of the clients (which are not

application servers) accesses its own client database, which may later be synchronized with the single central database by the database synchronizer. A database as described in Bauer refers to a collection of data that is manipulated by clients. Data manipulated by clients in a database is not session data that represents the state of a client session for a client. Session data is a well understood concept in the art of application servers. The data stored in the databases in Bauer is clearly not described as session data.

Additionally, the Bauer does not teach or suggest a first application server of the plurality of application servers, comprising a client state of the session data accessible to processes executing within the application server. As noted above, Bauer does not teach application servers. Also, the local databases in Bauer's clients do not store session data. Furthermore, Bauer does not say anything about processes executing within an application server accessing session data. Clearly, Bauer does not teach or suggest a first application server of the plurality of application servers, comprising a client state of the session data accessible to processes executing within the application server.

For at least the reasons presented above, the rejection of claim 1 is not supported by the cited art and withdrawal thereof is respectfully requested. Similar remarks also apply to claims 10, 19, 25 and 31.

Regarding claim 4, Bauer fails to teach or suggest where the immutable attributes include one or more attributes which have been designated as immutable attributes in response to user input. The Examiner does not attempt to make a proper rejection of claim 4. Instead, the Examiner simply rejects claim 2-4 together arguing that it would be obvious that Bauer's smart differencing would include the limitations of Applicants' claims. However, Bauer does not make any mention of designating attributes as immutable in response to user input. Since the Examiner has failed to provide a proper rejection of claim 4 and since Bauer fails to describe anything regarding designating attributes as immutable in response to user input, Bauer cannot be said to teach or suggest where the immutable attributes include one or more attributes which have been designated as immutable attributes in response to user input, as recited in Applicants'

claim 4. Thus, the rejection of claim 4 is not supported by the prior art and removal thereof is respectfully requested. Similar remarks also apply to claim 13.

Regarding claim 9, Bauer fails to teach or suggest a first application server configured to perform an object graph comparison of the set of attributes and the benchmark of the client state of the session data to determine a subset of the set of attributes that are modified. The Examiner admits that Bauer fails to teach performing an object graph comparison, but asserts that “using either binary comparison or tree comparison and compare to whatever value or number or condition are also a matter of programming choice.” The Examiner has not stated a proper *prima facie* rejection because the Examiner merely opining that a claim feature is “a matter of programming choice” does not meet the legal requirements to establish obviousness. All software is developed by programmers, and the details of how any piece of software works may be considered a “matter of programming choice”. “Deficiencies of the cited references cannot be remedied by the [Examiner’s] general conclusions about what is ‘basic knowledge’ or ‘common sense.’” *In re Zurko*, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). “Common knowledge and common sense ... do not substitute for authority.” *In re San Su Lee*. Common knowledge “does not in and of itself make it so” absent evidence of such knowledge. *Smiths Industries Medical Systems, Inc. v. Vital Signs, Inc.*, 51 USPQ2d 1415, 1421 (Fed. Cir. 1999). Furthermore, Applicants submit that it is not known in the prior art to employ object graph comparison of a set of attributes and a benchmark of a client state of the session data by an application server to determine a subset of attributes that are modified.

The Examiner has clearly failed to provide a *prima facie* obviousness rejection. The use of an object graph comparison is neither inherent nor obvious in view of the teachings of Bauer. Merely attributing those limitations not taught or suggested by Bauer to “programming choices” is clearly improper. The Examiner’s argument amounts to stating that using an object graph comparison would have been within the ordinary skill of the art. However, as described in the M.P.E.P. at 2143.01, paragraph 10, merely stating that modifications to a prior art reference to meet a claimed invention were well

within the ordinary skill of the art at the time the invention was made, “is not sufficient to establish a *prima facie* case of obviousness” without some objective reason to combine (or modify) the teachings of the references. The Examiner has not provided any suggestion or motivation to modify Bauer to include an object graph comparison. The rejection of claim 9 is clearly not supported by the cited art and removal thereof is respectfully requested. Similar remarks also apply to claims 18, 24, 30 and 36.

Applicant also asserts that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the rejection has been shown to be unsupported for the independent claims, a further discussion of the dependent claims is not necessary at this time.

CONCLUSION

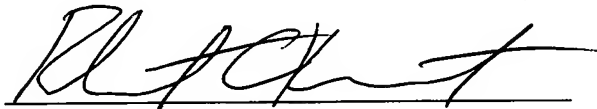
Applicants submit the application is in condition for allowance, and prompt notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above-referenced application from becoming abandoned, Applicants hereby petition for such an extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-11900/RCK.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☐ Petition for Extension of Time
- ☐ Notice of Change of Address
- ☐ Other:

Respectfully submitted,



Robert C. Kowert
Reg. No. 39,255
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8850

Date: January 20, 2006